

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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SAG HARBOR ADVISORS INC. and JAMES
SANFORD

Plaintiffs,

v.

SMART CITY CAPITAL LLC,

Defendant.

Civil Action Case No.: 20-cv-5443

**PROSE / RESPONDENTS RESPONSE TO NOTICE OF MOTION FOR BECKER
& POLIAKOFF'S MOTION TO WITHDRAW AS COUNSEL FOR DEFENDANT
SMART CITY CAPITAL LLC**

PLEASE TAKE NOTICE that Smart City Capital, LLC, Defendant and represented by counsel Glenn H. Spiegel, Esq., James J. Mahon, Esq., Evan B. Berger, Esq. and the law firms of Becker and Poliakoff, LLP and Becker and Poliakoff, P.A. (collectively "Becker"), received first and only notification of move to withdraw as counsel on Saturday September 17th, at 5 pm Eastern Time, 24 hours it was submitted said motion to the United States District Courts for the Southern and Eastern Districts of New York. Defendant Smart City Capital LLC, was completely taken by surprise as no advance notice of any kind was provided to the Defendant prior to submission and was awaiting a change / replacement of assigned Becker counsel from Mr. Evan B. Berger, Esq. given the various issues to date. Formal request was made in late August and no response or communication to date had taken place. Defendant has never met counsel Spiegel nor Mahon and have no communication with them, only Mr. Berger. Upon first notice of this motion on Saturday September 17th, Defendant wrote to Gary C. Rosen, Esq.

Managing Shareholder & Chief Executive Officer of Becker, to address this matter.

Defendant has not been updated or been on any of the pending matters or points by Mr. Berger, since requesting the change in counsel and no response to critical legal have not been responded to by Mr. Berger including the serious matter that Defendant becoming aware that Plaintiff's counsel has allegedly violated the non-disclosure / confidentiality of this case, given rise to potential sanctions.

It is important to clarify to the Court that various representations made in the motion to withdraw are not accurate as Mr. Berger / Becker Poliakoff, LLP has been paid for the matters in this case, despite the aforementioned issues and we can provide written confirmation from Mr. Berger provided to the Respondent, the motion also misrepresents that we received email notification on September 16th or some time prior to the motion filing, we can confirm that no communication on this matter or other important pending legal matters including setting up the pending deposition of the Plaintiff and others, nor the points raised on this motion.

We are awaiting a reply from Mr. Rosen, Esq. and Becker CEO today or as soon as possible as to retracting the motion to withdraw and replacing of Mr. Berger with another Becker counsel. If not possible, we will provide the Court with a substitute counsel to move the case forward effectively within the next 2 to 3 business days.

Defendant apologies to the Court for the form or submission process of this document is not correct as we are not Attorney's which is why we relied on Mr. Berger. We assure the Court that if a withdraw / Becker counsel replacement is not possible within the next 2 to 3 business days, we will submit a motion to replace Becker with

a new law firm.

Conclusion

WHEREFORE for the reasons set forth herein and need to correct representation or claims made in the Motion we received on Saturday, 24 hours after filing, Respondent requests this Honorable Court to delay from entering an Order granting their Motion to Withdraw or relief to allow the pending ask made of the Becker firm to replace counsel with an alternate Becker counsel to be addressed as well as provide initial communication on this motion as well as the other pending items given no communication or responses from Mr. Berger has been received by the Respondent for past several weeks on various case legal matters including the alleged confidentiality breach, pending deposition scheduling from our counsel as we have not been advised if said matter(s) have been addressed.

We appreciate the Court's time and consideration.

September 19, 2022

By:

Oscar Bode

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